

REMARKS

Applicant respectfully traverses, and requests reconsideration of, the rejection of claims 12-15 and 18-20 under 35 U.S.C. § 103(a) as being unpatentable (obvious) over Focke '464 in view of Bohdan '677, for the following reasons:

1. Focke relates to a hinge-lid cigarette pack with a box part, lid and collar. In a departure from the standard type of hinge-lid pack, gaps, namely "windows" 43, are formed in the front side. But the crucial feature here is not the window but rather the configuration of the upright pack edges as beveled edges. This type of pack (of standard design with beveled pack edges) is designated as an octagonal pack.

The description of the features of interest of this type of pack in the last paragraph of page two and the first paragraph of page 3 of the Office Action are objectively correct. However, the conclusion arrived at concerning the new features of the pack of the claimed invention with respect to Focke cannot be followed. It was by no means "obvious" to configure the contour of the pack in such a manner that material strips are positioned at an angle of 30° or 60°.

2. The origins of the "octagonal pack" of Focke are based on the idea of changing a conventional, cuboid-shaped cigarette pack having right-angled pack corners to such a degree that the pack's design would conform more closely or precisely to the contents of the pack. Enclosed as **Exhibit B** is a drawing sheet showing partial cross-sections of cigarette packs. To the left is the octagonal pack cited as the Focke reference with a considerable enlargement of the corner configuration. To the right is the corresponding illustration of a conventional pack with right-angled pack corners. The dashed lines in the enlarged view of the pack corner indicate the considerations that led to the "octagonal pack" of Focke. The object is to adapt the contour of the

pack to the dimensions of the (four) corner cigarettes. This background is also employed in the examples shown in Fig. 1 to Fig. 3 of Focke, namely in the case of a comparable hinge lid pack with round pack edges.

3. In the case of the pack pursuant to the present invention, a pack contour is proposed that alters the effective spatial volume of the pack. While the cigarettes in the packs of Focke are arranged in the 7-6-7 formation common to standard hinge-lid packs, specifically with the exact same relative position of the individual cigarettes (see the illustration in Exhibit B), the pack pursuant to the present invention is associated with a special cigarette formation (Fig. 9, Fig. 10). This formation is oriented to transversely directed rows of cigarettes.

Furthermore, the cigarette formation employed in the pack of the present invention is not only adapted to conform to the pack's dimensions but also to its contour. As discussed in Applicant's previous response, the dimensions of the material strips 28, 29, as well as of the side walls 22, not only conform to each other but also to the dimensions resulting from the transverse cigarette rows with different numbers of cigarettes. In particular, it is ensured that the respective marginal cigarettes lie in the regions of the angulations 37, 38 in a stabilizing manner, thus providing a positive-fitting support between the pack and the cigarettes. This effect is not achieved in the pack of Focke since the cigarettes abut the planar wall surfaces of the pack.

4. The cigarette formation suggested for the pack according to the present invention is not fundamentally new. The Bohdan specification shows such a cigarette arrangement in Fig. 6.

In the assessment of this prior art, it should be noted that Bohdan recommends this cigarette formation for "round packs", i.e. for a cigarette pack – whose constructive details

remain open – with side walls that are rounded across their full width (fully rounded side walls). From this, no suggestion can be deduced for employing the same cigarette formation and adapting it to the pack dimensions of a hinge-lid pack having the contour according to the present invention. In any case, Bohdan fails to disclose the strict correlation between pack contour and cigarette formation. Such an association is all the less likely, since Bohdan recommends the cigarette formation shown in Fig. 6 expressly for "*a channeling device .. which is also of oval shape.*" (column 3, lines 49, 50 and lines 52, 53). For the person of ordinary skill in the art, it is clear from Fig. 2 of Bohdan that a different cigarette formation must be found for the "*octagonal*" contour mentioned in column 3, line 57.

5. The pack configuration according to the claimed invention would not have been obvious from a combined view of Focke and Bohdan, for the following reasons:

a) The pack contour of Focke is the result of an attempt to adapt a pack having right-angled edges to the contour of a pack group of conventional formation having four "corner cigarettes". This fundamental design of the Focke pack cannot be transferred to the present invention.

b) The pack according to the present invention relates to an innovative and nonobvious coordination between a selected formation of the cigarette group (as the pack contents) and the pack contour. This results in the creation of an overall stable pack with an optimum positioning of the cigarettes. The present invention creates for the first time a pack having a special geometric form that is well adapted to an individual formation of the cigarette group. This interrelationship, or even a suggestion thereof, cannot be derived from Focke.

c) There is no reason or motivation to apply details of the Bohdan specification to Focke. The pack of Focke ("octagonal pack") as shown in the illustrated embodiment is not suited for a cigarette formation pursuant to Fig. 6 of Bohdan. Since Bohdan states that the disclosed cigarette formation (Fig. 6) is suited only for packs of oval shape, even an expert in the art would see no reason to apply such ideas to a pack having a polygonal cross-section.

A person of ordinary skill in the art can also see from other published sources, such as EP 0 414 532 A1, that an obvious interrelationship exists between the cigarette formation in question and a pack having an oval cross-sectional shape. This can be seen from Fig. 15 of the aforementioned EP '532.

Applicant appreciates Examiner Demeree's detailed explanation of why the Examiner thinks that the subject matter of claims 12-15 and 18-20 would have been obvious from the combined teachings of Focke '464 and Bohdan '677.

To respond in kind, Applicant has presented the above arguments in an effort to explain why Applicants claimed subject matter would not have been obvious from the combined teachings of Focke '464 and Bohdan '677.

The bottom line is that the Focke/Bohdan combination does not teach, or even suggest, **all of the limitations** of claims 12-15 and 18-20, and therefore is incapable of rendering obvious the subject matter of each of these claims within the meaning of 35 U.S.C. § 103(a).

Applicant sincerely believes that Applicant's disclosed invention and the subject matter of each of the rejected claims 12-15 and 18-20 would not have been obvious from this prior art.

REQUEST FOR INTERVIEW

However, Applicant recognizes that a holding of obviousness/nonobviousness can be quite subjective. In this regard, Applicant takes note of the Examiner's, "Response to

REQUEST FOR RECONSIDERATION UNDER 37 C.F.R. § 1.116

AND REQUEST FOR INTERVIEW

Attorney Docket No.: Q90107

Application No.: 10/550,890

Arguments". Furthermore, if the Examiner still feels that the application is not in condition for allowance with claims 12-15 and 18-20, Applicant respectfully requests the Examiner to **call the undersigned attorney** to discuss, for example, what claim amendments the Examiner may feel are necessary to patentably distinguish over the prior art.

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Applicant concurrently files herewith a Petition (with fee) for an Extension of Time of one month. The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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WASHINGTON OFFICE

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EXHIBIT B

